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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/027,681

12/21/2001

T. Daniel Gross

033297-120

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10/23/2006

WORKMAN NYDEGGER  
1000 EAGLE GATE TOWER,  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UT 84111

EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/027,681	GROSS ET AL.	
	Examiner	Art Unit	
	Diane Yabut	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/21/2003</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 September 2005 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 4 February 2002 is acknowledged. In addition, the IDS submitted on 22 February 2002 and the IDS submitted on 21 August 2003 are acknowledged. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The

Art Unit: 3734

abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Applicant included legal phraseology "comprising" on line 2 of the abstract.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by **Buelna** (U.S. Patent No. **5,242,459**).

Claim 3: Buelna discloses a suture trimmer comprising a shaft **16** having a proximal end and a distal end and an axis therebetween, the shaft **16** having a groove **58** formed in the side thereof, the groove **58** in communication with an opening **38** formed in the side of the shaft, the opening **38** disposed proximal the distal end (Figures 1 and 4). Buelna discloses a cutting member **30** and a suture retainer **12** both slidably disposed within the shaft **16** (col. 4, lines 7-13). Buelna also discloses a handle assembly, the handle disposed adjacent the proximal end of the shaft (Figure 1). Buelna discloses the handle assembly further including a first lever **60** and a second lever **62** that are

Art Unit: 3734

operatively coupled to the suture retainer and cutting member, respectively (col. 5, lines 49-52 and lines 55-58).

Claim 4: Buelna discloses a biasing member **40**, the biasing member **40** in communication with the cutting member **30** (col. 4, lines 32-36 and col. 5, lines 3-9).

Claim 5: Buelna discloses the opening **38** having a proximal edge and the cutting member **30** having a sharpened edge **36** which is adapted to engage the proximal edge to sever suture when suture is disposed through the groove and opening (col. 5, lines 53-55).

Claim 6: Buelna discloses a sharpened edge **36** of a cutting member **30** which is retracted within the shaft until it is withdrawn by applying a force to the second lever **62** (col. 5, lines 49-52).

Claim 7: Buelna discloses a suture that is disposed within the groove **58** and opening **38** by retracting the suture retainer within the shaft **16** by applying a force to the first lever **60** (col. 5, lines 29-33).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Van Ess** (U.S. Patent No. **6,007,554**) discloses a surgical cutter with a retractable blade sheath and a opening formed in the side of a shaft; **Sauer et al.** (U.S. Patent No. **5,520,702**) discloses a suture trimmer with a suture retainer and cutter slideable within a shaft.

Art Unit: 3734

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane Yabut whose telephone number is (571) 272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER